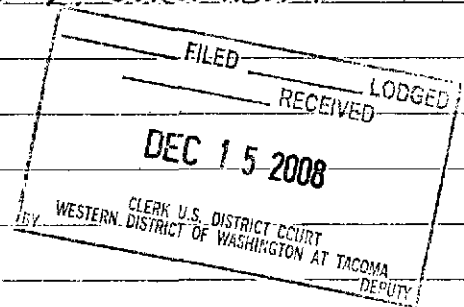


DISTRICT JUDGE FRANKLIN D. BURGESS

MAGISTRATE JUDGE KAREN L. STROMBOM



08-CV-05109-RPLY



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAMES EDWARD CURTIS, NO. 08-5109-FDB-KLS

Plaintiff, PLAINTIFF'S REPLY TO

DEFENDANT RILEY'S

RESPONSE TO PLAINTIFF'S

MOTION FOR ORDER GRANTING

TERRY J. BENDA, et al, LEAVE TO FILE AMENDED

COMPLAINT

Defendants NOTED FOR: 12/12/08

COMES NOW the Plaintiff,

James Curtis, pro se, and hereby replies to

"Defendant Riley's Response To Plaintiff's Motion

For Order Granting Leave To File Amended Com-

PLAINTIFF'S REPLY TO DEFENDANT RILEY'S RESPONSE TO
PLAINTIFF'S MOTION FOR ORDER GRANTING LEAVE TO FILE
AMENDED COMPLAINT - 1

NO. 08-5109-FDB-KLS

James Curtis #084533
AMCC
P.O. Box 2049 M3374
Airway Heights, WA
99001

1 plaint.

3 I. ARGUMENT

5 1. Aside from not receiving my proposed
7 amended complaint, Defendant Riley has not
9 proffered any reason to support his contention
11 that the Court should deny me leave to
13 file an amended complaint.

15 2. In fact, Defendant Riley's coun-
17 sel, Ms. Olson, asserts that it is "unknown
19 if the amendments would be futile or if
21 [sic] would cause undue prejudice to
23 Defendant Riley." She further asserts the
25 following: "Until the Plaintiff provides
26 a proposed amended complaint, the
27 Court should deny his motion."

30 PLAINTIFF'S REPLY TO DEFENDANT RILEY'S RESPONSE TO
PLAINTIFF'S MOTION FOR ORDER GRANTING LEAVE TO FILE
AMENDED COMPLAINT - 2
NO. 08-5109-FDB-KLS

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99001

1 3. While the Civil Rights Act, 42
 2
 3 U.S.C. section 1983, is not merely a "font
 4
 5 of tort law," it is one of the few legal
 6
 7 vehicles that is available to prisoners who have,
 8
 9 inter alia, been subjected to, inter alia, crim-
 10
 11 inal prosecutions based on fabricated evidence,
 12
 13 etc.

14
 15 4. I only wish to use this Act
 16
 17 and forum to obtain justice.

18
 19 5. I was unaware that I had to
 20
 21 present my proposed amended complaint with my
 22
 23 motion. I am not an attorney, nor have I
 24
 25 had legal training or the experience of
 26
 27 litigating a civil suit before.

28
 29
 30 PLAINTIFF'S REPLY TO DEFENDANT RILEY'S RESPONSE TO
 PLAINTIFF'S MOTION FOR ORDER GRANTING LEAVE TO FILE
 AMENDED COMPLAINT - 3
 NO. C08-5109-FDB-KLS

James Curtis #984533
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 99001

6. Under the circumstances, I ask
that the Court either grant me leave to file an
amended complaint, or, in the alternative,
allow me to supplement the record by presenting
my proposed amended complaint to the Court
and opposing counsel so that

7. (a) opposing counsel
can properly respond to my motion;

8. (b) the Court can
make a decision as to whether or not I
will be granted leave to file an amended
complaint.

IT SERVICE OF BENDA

9. Defendant Benda was properly

PLAINTIFFS' REPLY TO DEFENDANT RILEY'S RESPONSE TO
PLAINTIFFS' MOTION FOR ORDER GRANTING LEAVE TO FILE
AMENDED COMPLAINT - 4
NO. C08-5109-FDB-KLS

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1 served and is obstructing justice by trying to avoid
 2
 3 service, and I object to the hearsay in Ms.
 4
 5 Olson's declaration, and reserve the right to
 6
 7 file a motion to strike the proffered hear-
 8
 9 say from the record.
 10

11 10. In addition to the facts (con-
 12
 13 cerning service of Benda) contained in my
 14
 15 motion for leave to file an amended com-
 16
 17 plaint, the following should be borne in mind:
 18

19 11. (a) Defendant Benda is
 20
 21 being sued for tampering with, destroying and,
 22
 23 inter alia, fabricating evidence in a criminal
 24
 25 prosecution — acts that are deceptive, pre-
 26
 27 meditated and malicious in nature ;
 28
 29

30 PLAINTIFF'S REPLY TO DEFENDANT RILEY'S RESPONSE TO
 PLAINTIFF'S MOTION FOR ORDER GRANTING LEAVE TO FILE
 AMENDED COMPLAINT — 5
 NO. 08-5109-FDB-KLS

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12. (b.) Significantly, Mr. Vernon properly served Defendant Benda at his place of employment — that is, at the same address that the U.S. Marshal unsuccessfully attempted to serve Benda by mail at; and

13. (c.) There is only one person who has a motive to ensure that proper service is not made: DEFENDANT TERRY BENDA.

14. Defendant Benda is apparently manipulating Mr. Olson into believing and arguing that he wasn't properly served.

15. As the proof of service

PLAINTIFF'S REPLY TO DEFENDANT RILEY'S RESPONSE TO PLAINTIFF'S MOTION FOR ORDER GRANTING LEAVE TO FILE AMENDED COMPLAINT — 6

NO. 108 - 5109 - FDB - KLS

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Airway Heights, WA
99007

1 filed with the Court delineates, Defendant
 2
 3 Benda was served with the Complaint and
 4
 5 Summons.

6
 7 16. Mr. Vernon is expected to
 8
 9 file a declaration addressing the assertions
 10
 11 made on behalf of Defendant Benda.

12
 13 17. Moreover, the Complaint that
 14
 15 Defendant Benda was provided was legible,
 16
 17 and should not be confused with the
 18
 19 copied pages that were faxed to Mr. Olson
 20
 21 and then copied again before they were
 22
 23 attached to Mr. Olson's declaration.

24 CONCLUSION

25
 26
 27 For the reasons stated, the Court is

28
 29
 30 PLAINTIFF'S REPLY TO DEFENDANT RILEY'S RESPONSE TO
 PLAINTIFF'S MOTION FOR ORDER GRANTING LEAVE TO FILE
 AMENDED COMPLAINT - 7
 NO. 08-5109-FDB-KLS

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 AHCC
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 Airway Heights, WA
 99001

1 requested to either grant me leave to file
 2
 3 an amended complaint, or allow me to
 4
 5 supplement my motion / the record with a
 6
 7 proposed amended complaint.
 8

9 Dated this 11th day of December,
 10 2008.
 11

12 I declare under penalty of perjury
 13
 14 of the laws of the State of Washington
 15
 16 that the foregoing is true and correct to
 17
 18 the best of my knowledge.
 19

20 James Curtis
 21 James Curtis #984533
 22 Plaintiff, Pro Se
 23

24 CERTIFICATE OF SERVICE
 25

26 I hereby certify that I have
 27
 28 mailed by United States Postal Service Plaintiff's
 29

30 PLAINTIFF'S REPLY TO DEFENDANT RILEY'S RESPONSE TO
 PLAINTIFF'S MOTION FOR ORDER GRANTING LEAVE TO FILE

AMENDED COMPLAINT - 8

NO. 08-5109-FDB-KLS

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 99001

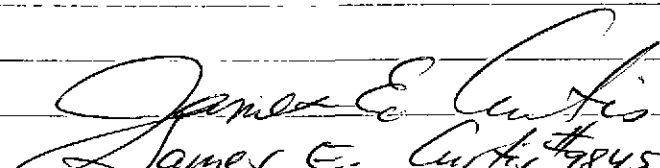
1 Reply To Defendant Riley's Response To Plaintiff's

2
3 Motion For Order Granting Leave To File

4
5 Amended Complaint to the following parti-
6
7 cipant:

8
9 Sara J. Olson
10 Assistant Attorney General
11 Attorney General of Washington
12 P.O. Box 40116
13 Olympia, WA 98504-0116
14

15 Dated this 11th day of Dec-
16
17 ember, 2008.

18
19 
20 James E. Curtis #984533
21
22
23
24
25
26
27
28
29

30 PLAINTIFF'S REPLY TO DEFENDANT RILEY'S RESPONSE TO
PLAINTIFF'S MOTION FOR ORDER GRANTING LEAVE TO FILE
AMENDED COMPLAINT - 9

NO. C08-5109-F0B-KLS

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